

MEJ

JS 44 (Rev. 12/07) (and rev 1-16-08)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required to be filed with the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> RICHARD WITTREN	<b>DEFENDANTS</b> PETE GEREN, SECRETARY, DEPARTMENT OF THE ARMY
<b>(b) County of Residence of First Listed Plaintiff SONOMA</b> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Beverly Saxon Leonard, The Saxon Leonard Law Firm 1001 Second St., Ste. 345 Napa, CA 94559 707.257.5378	Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="0"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Resportment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

<b>V. ORIGIN</b> (Place an "X" in One Box Only)	Transferred from
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Rehabilitation Act of 1973, sections 501, 504, 505 and Title VII of Civil Rights Act of 1964 Brief description of cause: Plaintiff is a disabled male over 40 whom alleges employment discrimination/harassment
<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Proven at trial CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>VIII. RELATED CASE(S) IF ANY</b>	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

<b>IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)</b>	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE
DATE 4/28/08	SIGNATURE OF ATTORNEY OF RECORD <i>[Signature]</i>

BY FAX

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7 BSLeonard@aol.com

8 Attorney for Plaintiff  
9 RICHARD WITTREN

E-filing

FILED  
08 APR 29 PM 3:51  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MB  
IS

10 IN THE DISTRICT COURT OF THE UNITED STATES

11 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)

12 RICHARD WITTREN,

13 Plaintiff,

14 v.

15 PETE GEREN, SECRETARY,  
16 DEPARTMENT OF THE ARMY,

17 Defendant.

Case No.: 08-220

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

BY FAX

MEJ

18 Comes now Plaintiff, Richard Wittren, by way of complaint against defendant herein and  
19 alleges as follows:

20 1. Plaintiff Richard Wittren is, and at all times relevant to this complaint, has been been  
21 a resident of Sonoma County, State of California.

22 2. Defendant is located in Geyserville, Sonoma County, California, which is also where  
23 the injury complained of took place.

24 3. This action is brought pursuant to Sections 501, 504 and 505 of the Rehabilitation  
25 Act of 1973 and Title VII of the Civil Rights Act of 1964 for employment discrimination.  
26 Jurisdiction is conferred on this court by 28 U.S.C. Sections 1331 and 1343.

1           4. Plaintiff is a male over the age of 40 with physical and mental disabilities and alleges  
2 that the conduct which underlies his claim of discrimination is based on his disability. Plaintiff is  
3 disabled in that his conditions are physical and mental impairments that substantially limit one or  
4 more of Plaintiff's major life activities and Plaintiff has a record of physical and mental impairments  
5 that substantially limits one or more of Plaintiff's major life activities.

6           5. Plaintiff began working for defendant in December 2000 and was employed as a  
7 "STEP" Maintenance Laborer for the U.S. Army Corps of Engineers at their Lake Sonoma location.  
8 His disabilities at the time of his hire and throughout his employment with defendant consisted of,  
9 among other things, a speech impediment, a limp, a wandering eye, paralysis in his left hand and he  
10 was a slow learner.

11           6. Shortly after Plaintiff commenced employment with Defendant, his co-workers  
12 learned through his supervisor, Dave Serafini, that he was a recipient of Social Security disability  
13 income. A fellow employee, Keith Richardson, began to taunt Plaintiff about this, frequently calling  
14 him "Soche Boy." Although this was done in the presence of Plaintiff's supervisors, there was no  
15 attempt to curtail Richardson's use of the derisive nickname. On several occasions, Plaintiff asked  
16 Serafini, to instruct Richardson to stop using the offensive language without success. Richardson  
17 also physically harassed Plaintiff by grabbing Plaintiff's ear and twisting it so painfully that Plaintiff  
18 was often forced to his knees. This also was done in the presence of Serafini and other employees  
19 of Defendant without consequence.

20           7. In April 2003, an EEO representative came to speak to Defendant's employees at  
21 Plaintiff's place of work. Following the presentation, Plaintiff spoke in private to the representative  
22 regarding Mr. Richardson's language and conduct. A few days later, Plaintiff's supervisor, Serafini,  
23 scolded Plaintiff for having the temerity to report Richardson's conduct to the EEO representative.  
24 Thereafter, Plaintiff's work assignments increasingly became menial and he was only given  
25 assignments that other employees felt was beneath them. While others in Plaintiff's position were  
26 being trained in mechanical and semi-skilled positions, Plaintiff was relegated to watering trees and  
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1 pulling weeds. Serafini also assigned Plaintiff solely to the task of cleaning the shop at the end of  
2 the day, a job which had previously been assigned to each of the co-workers. Serafini also actively  
3 excluded Plaintiff from certain training opportunities which would have assisted Plaintiff in  
4 qualifying for additional positions with Defendant. For instance, on one occasion, Serafini was  
5 assigning other maintenance workers to be trained on tractor driving. When Plaintiff asked if he  
6 could be included in the training, Serafini replied, "you will be in charge of putting air in the tires,"  
7 in front of the other employees. Plaintiff did not receive this training. In addition, Plaintiff was  
8 referred to as "Snitch Boy" by Richardson and other employees after he informed the EEO  
9 representative about his treatment at the workplace.

10 8. Prior to Serafini's appointment as his supervisor, Plaintiff was supervised by Rich  
11 Ward. Ward had told Plaintiff that he was next in line to be promoted to another position, one with  
12 a larger opportunity of being hired as a permanent employee with Defendant. Serafini echoed this  
13 advice when he first became Plaintiff's supervisor, until Plaintiff spoke with the EEO representative  
14 in April 2003. In December 2003, Plaintiff was called into the office of Perry Crowley, Park  
15 Manager, for a talk with Crowley and Serafini. Crowley advised Plaintiff at the time that another  
16 STEP employee, with only six months of experience, was going to be promoted rather than Plaintiff.  
17 Crowley specifically stated to Plaintiff that Plaintiff would be fired if he complained about Gay's  
18 promotion to the EEO. Serafini told Plaintiff in the course of the meeting that he would never get  
19 promoted and would always be a STEP employee.

20 9. In March 2004, Plaintiff filed a Formal Complaint of Discrimination with Defendant.  
21 During the pendency of that matter, on or about November 19, 2004, Plaintiff was advised by Perry  
22 Crowley that his employment was being terminated. Although the Defendant contended that the  
23 termination of Plaintiff was for budgetary reasons, other employees at Plaintiff's level were not laid  
24 off at that time.

25 10. Plaintiff has filed a timely EEO complaint of employment discrimination and has  
26 received a Final Agency Decision. Therefore, he has exhausted his administrative remedies with  
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1 respect to his discrimination complaint.

2 11. Defendant, and its agents and employees, engaged in a pattern and practice of  
3 discriminating and harassing Plaintiff on the basis of disability in violation of federal civil rights  
4 laws, by engaging in the course of conduct set forth above.

5 12. As a direct and proximate result of defendant's actions, described above, Plaintiff has  
6 suffered damages, both special and general, in an amount to be proved at trial.

7 13. In acting as alleged in this complaint, defendant by and through its agents and  
8 employees, acted knowingly, willfully and maliciously, and with reckless and callous disregard for  
9 plaintiff's federally protected rights.

10 14. By reason of the conduct of the defendants and each of them as alleged herein,  
11 Plaintiff has necessarily retained attorneys to prosecute this action. Plaintiff is therefore entitled to  
12 reasonable attorneys' fees and litigation expenses incurred in bringing this action.

13 15. Plaintiff hereby demands a jury for all claims for which a jury is permitted.

14 WHEREFORE, Plaintiff prays for judgment against defendant as follows:

- 15 1. For compensatory damages, in an amount to be determined according to proof at  
16 trial;  
17 2. For punitive damages, in an amount to be determined according to proof at trial;  
18 3. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;  
19 4. For costs of suit incurred in this action;  
20 5. For jury trial; and  
21 6. For such other and further relief as the Court deems proper.

22 Dated: April 28, 2008

THE SAXON LEONARD LAW FIRM

23  
24 By: 

Beverly Saxon Leonard, Attorney for  
Plaintiff Richard Wittren